Exhibit G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: **SETTLEMENT FACILITY DOW CORNING TRUST**	§	**Case No. 00-MC-00005** **(Settlement Facility Matters)** **Hon. Denise Page Hood**

RESPONSE OF DOW SILICONES CORPORATION, THE DEBTOR'S REPRESENTATIVES, AND THE CLAIMANTS' ADVISORY COMMITTEE TO THE MOTION FOR EXTENSION OF DEADLINE FOR FILING CLAIM

For the reasons set forth in the attached memorandum, Dow Silicones Corporation ("Dow Silicones"),[1] the Debtor's Representatives (the "DRs") and the Claimants' Advisory Committee ("CAC") oppose Yeon Ho Kim's Motion for Extension of Deadline for Filing Claim, ECF No. 1586 ("Motion for Extension") and respectfully submit that the Motion for Extension should be denied.

[1] As Dow Silicones Corporation previously advised the Court, Dow Corning Corporation changed its name to Dow Silicones Corporation on February 1, 2018.

Dated: February 17, 2021

Respectfully submitted,

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Claimants' Advisory Committee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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In re: **SETTLEMENT FACILITY DOW CORNING TRUST,**	§	**Case No. 00-CV-00005** **(Settlement Facility Matters)** **Hon. Denise Page Hood**

PROPOSED ORDER OF DOW SILICONES CORPORATION, THE DEBTOR'S REPRESENTATIVES AND THE CLAIMANTS' ADVISORY COMMITTEE DENYING THE MOTION FOR EXTENSION OF DEADLINE FOR FILING CLAIM

The Court has considered the response of Dow Silicones Corporation, the Debtor's Representatives, and the Claimants' Advisory Committee to Yeon Ho Kim's Motion for Extension of Deadline for Filing Claim, ECF No. 1586 ("Motion for Extension"), and the Court finds and concludes that the Motion for Extension should be denied with prejudice.

ACCORDINGLY, it is hereby ORDERED that the Motion for Extension is DENIED with prejudice.

DATED: _____

_____
DENISE PAGE HOOD
CHIEF JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	§	**Case No. 00-CV-00005**
	§	**(Settlement Facility Matters)**
SETTLEMENT FACILITY DOW CORNING TRUST	§	
	§	**Hon. Denise Page Hood**

MEMORANDUM IN SUPPORT OF THE RESPONSE OF DOW SILICONES CORPORATION, THE DEBTOR'S REPRESENTATIVES AND THE CLAIMANTS' ADVISORY COMMITTEE TO THE MOTION FOR EXTENSION OF DEADLINE FOR FILING CLAIM

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Should the Court alter the terms of Closing Order 1 (entered on July 25, 2018) in order to change the deadline for submission of Settling Personal Injury Claims for payment in violation of the terms of the confirmed and consummated Amended Joint Plan of Reorganization of Dow Corning Corporation?

   Respondents' Answer: No.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

- *Korean Claimants v. Claimants' Advisory Committee*, 813 Fed. Appx. 211 (6th Cir. 2020)
- 11 U.S.C. § 1127(b)
- Dow Corning Amended Joint Plan of Reorganization
- The Settlement Facility and Fund Distribution Agreement
- Dow Corning Settlement Program and Claims Resolution Procedures, Annex A

Dow Silicones Corporation ("Dow Silicones"), the Debtor's Representatives (the "DRs") and the Claimants' Advisory Committee (the "CAC") respectfully request that the Court deny Yeon Ho Kim's Motion for Extension of Deadline for Filing Claim, ECF No. 1586 ("Motion for Extension").

INTRODUCTION

More than 21 years after the bankruptcy court issued an order confirming the Dow Corning Amended Joint Plan of Reorganization ("Plan") (Exhibit A)[1] and more than 16 years after the Plan became Effective pursuant to this Court's order, the Korean Claimants seek to alter the Plan-specified deadline for submitting benefits claims to the Settlement Facility-Dow Corning Trust ("Settlement Facility" or "SF-DCT").[2] The Korean Claimants seek to characterize the deadline as one that was imposed without notice in Closing Order 1.[3] The Korean Claimants are plainly wrong: Closing Order 1 does not establish the final deadline for submitting benefits

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[1] *See* Order Confirming Amended Joint Plan of Reorganization as Modified, *In re Dow Corning Corp.,* Case No. 95-20512, Dkt No. 21381 (Bankr. E.D. Mich. Nov. 30, 1999) (Exhibit B).

[2] Unless otherwise defined, capitalized terms used herein shall have the meaning provided in the Plan or the Settlement Facility and Fund Distribution Agreement ("SFA") (Exhibit C) or the Dow Corning Settlement Program and Claims Resolution Procedures, Annex A to the Settlement Facility and Fund Distribution Agreement ("Annex A") (Exhibit D).

[3] *See* Closing Order 1 for Final June 3, 2019 Claim Deadline (Establishing Final Cure Deadlines, Revised Claim Review Procedures, and Appeal Deadlines), ECF No. 1447 (Exhibit E) ("Closing Order 1").

claims. The Plan itself specifies the dates by which claims must be submitted to the Settlement Facility in order to be eligible for consideration. The Motion for Extension asks this Court to—in effect—amend those provisions of the Plan. Such an amendment would violate the Bankruptcy Code's prohibitions on amendments to plans of reorganization that are substantially consummated and would be contrary to controlling case law. It is unconscionable for Korean Claimants to raise this request now—nearly three years after the entry of the Order that they assert is problematic and more than 16 years after the Plan became effective and commenced the process of paying eligible claims. If Korean Claimants thought that a 15-year period did not provide sufficient time to submit a claim, they should have raised this at the time of confirmation—21 years ago. The Motion for Extension must be denied.

BACKGROUND

A. CONTROLLING PLAN DOCUMENTS

Dow Corning filed its petition for reorganization under Chapter 11 of the Bankruptcy Code on May 15, 1995. Over nine years later, on June 1, 2004, the Plan became Effective by Court order. The Plan prescribes detailed terms and conditions for the resolution of the claims of creditors. Tort creditors—such as Korean Claimants—were provided a settlement option and a litigation option for the

resolution of their claims against Dow Corning. The details of the settlement program are set forth in the SFA and in Annex A to the SFA.

Annex A specifies the terms under which tort creditors may receive a payment from the settlement program—including detailed criteria prescribing eligibility terms and applicable time deadlines for filing benefit claims and for curing deficiencies in such claims. Annex A outlines the specific requirements for each benefit option: Expedited Release, Explant, Rupture, and Disease (Option I and Option II). *See* Annex A at Article VI.[4] Article VII of Annex A outlines the general processing protocols for benefit claims. Article VII of Annex A expressly prescribes the deadlines for submission of benefits claims. *See* Annex A at § 7.09.

Specifically, Section 7.09 provides that:

(1) Claims for Explant benefits "must be submitted on or before the 10th anniversary of the Effective Date." *Id.* at § 7.09(a)(i). The 10th anniversary of the Effective Date was June 2, 2014.

(2) Claimants must submit claims for rupture benefits on or before the 2nd anniversary of the Effective Date. *Id.* at § 7.09(c)(i). The second anniversary of the Effective Date was June 1, 2006.

[4] Annex A also prescribes the criteria and terms for resolution of "Silicone Materials Claims", "Other Products Claims", and for four specific alternative options provided only for Class 6.2 claimants. *Id.* at § 6.05(b), (c), (d) and (e).

(3) Claimants were allowed to apply for disease benefits at any time up to the fifteenth anniversary of the Effective Date. *Id.* at § 7.09(b)(i). The fifteenth anniversary of the Effective Date was June 3, 2019.

(4) Claimants could apply for an Expedited Release payment until the third anniversary of the Effective Date, unless that deadline was extended by the Claims Administrator. *Id.* at § 6.02(f)(1). The Claims Administrator, in fact, did extend that deadline until the fifteenth anniversary of the Effective Date, which was June 3, 2019. *See* https://www.sfdct.com/_sfdct/index.cfm/deadlines (Exhibit F) (last accessed February 16, 2021).

The Plan thus clearly and unequivocally provides that the last day for Settling Personal Injury Claimants to file a benefit claim for the last available option—a disease payment—was June 3, 2019. There can be no confusion—this deadline is stated more than once in Annex A: "Eligible Breast Implant Claimants may elect compensation for Disease Payment Option benefits based either on the disease definitions listed in the Original Global Settlement (Disease Payment Option I) or on the criteria set forth in the Long Term Benefit Schedule of the Revised Settlement Program (Disease Payment Option II) *any time on or before the fifteenth anniversary of the Effective Date.*" *Id.* at § 6.02(a)(ii)(a) (emphasis added).[5] To receive a

[5] All of the terms and criteria for benefits claims for breast implant claimants apply to claimants in classes 5, 6.1 and 6.2. *See id.* at § 6.05. There are some additional

payment for any of these benefit options, the clamant must submit acceptable proof of a Dow Corning implant.[6] A benefit claim alone will not qualify for payment. Thus, the effective deadline for submitting the Proof of Manufacturer materials to support a disease claim is the same.

B. NOTICE

On December 27, 2017, the Court authorized, and directed the SF-DCT to distribute to all claimants and attorneys, a notice reminding them of the Plan-mandated June 3, 2019 final deadline for filing new Disease or Expedited Release claims and for filing submissions and any documentation necessary to supplement previously filed claims and to support new benefit claims (the "Notice"). *Stipulation and Order Approving Notice of Closing and Final Deadline for Claims,* ECF No. 1342 (Dec. 27, 2017) (Exhibit G).[7] The Notice advised that to be considered by the SF-DCT, any previous requests to claimants by the SF-DCT for documentation must be submitted by June 3, 2019 or, if applicable, a specific date set by the SF-DCT in a Notification of Status letter.

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options available to claimants in class 6.2 that are not relevant here. *See* note 4, *supra*.

[6] There are two Class 6.2 payment options that have more limited proof requirements and also reduced payment amounts – and these factors are not related to the final submission deadline.

[7] The Plan does not require that any such notice be provided. The distribution of the notice was an added benefit to claimants.

The Notice was posted on the SF-DCT website and mailed to each attorney of record, including counsel for Korean Claimants. *See* February 16, 2021 Declaration of Ellen Bearicks (the "Bearicks Dec.") (Exhibit H). In addition, the SF-DCT ensured that a second reminder notice was provided where appropriate. A specific additional reminder notice was sent to counsel for Korean Claimants on March 13, 2019. *See id.* at ¶ 9 and Exhibit 2. In addition, in 2004 counsel for Korean Claimants subscribed to the CAC's newsletters, and his subscription has continued without interruption since. *See* February 16, 2021 Declaration of Dianna Pendleton-Dominguez, at ¶ 4. (Exhibit I).[8] The newsletters consistently and frequently advised subscribers that the final deadline to submit claims for benefits from the Settlement Facility was June 3, 2019 and that no claims submitted after that date would be accepted. *Id.* at ¶ 5. The newsletters contained links to the Notice document approved by the Court and distributed to attorneys and claimants in early 2018, which states that the final deadline to submit claims to the Settlement Facility is June 3, 2019. *Id.*

[8] In another pleading filed by Korean Claimants, counsel indicates that he has received CAC newsletters. *See* Response of Korean Claimants to Finance Committee's Recommendation and Motion for Authorization to make Second Priority Payments, at Exh. 10 (ECF 1584-2) (attaching a 2020 CAC newsletter as Exhibit 10 to Korean Claimant's Response) (Excerpts of Response attached as Exhibit J).

There were no objections to this Notice and there were no appeals of the Order approving the Notice.

C. CLOSING ORDERS

On July 25, 2018, the Court entered Closing Order 1. Closing Order 1 provides guidance to the SF-DCT to ensure the orderly conclusion of the settlement program and all operations. The purpose and intent of Closing Order 1 is to confirm procedures for processing and finalizing claims as the settlement program reached the final submission deadline. For example, Closing Order 1 provides for simultaneous processing of Proof of Manufacturer submissions and substantive benefits submissions (to avoid a piecemeal process that could delay final claims processing). Closing Order 1 at ¶ 22. Closing Order 1 also ensures that rupture and explant claims that had been submitted timely would be processed provided they submitted their Proof of Manufacturer materials by the final June 3, 2019 deadline. *Id.* at ¶ 24. Closing Order 1 further confirms that the deadline for submission of Proof of Manufacturer is coextensive with the deadline for the submission of the last benefit option—*i.e.*, the 15th anniversary of the Effective Date. *Id.* at ¶¶ 21-24. There were no objections to, or appeals of, Closing Order 1.

ARGUMENT

A. THE PLAN PRESCRIBES THE FINAL DEADLINE FOR SUBMITTING CLAIMS FOR PAYMENT: KOREAN CLAIMANTS' ASSERTION THAT THE DEADLINE WAS IMPOSED BY CLOSING ORDER 1 IS INCORRECT

The Korean Claimants contend that the final claim filing deadline was imposed by paragraph 29 of Closing Order 1 and that they have been disadvantaged by this deadline. They assert that the deadline should not be effective because Closing Order 1 was entered as a stipulated order without opportunity for a prior hearing by Korean Claimants. First, of course, the Korean Claimants' contention is simply incorrect: The Plan itself – not Closing Order 1 – established the final filing deadline. Closing Order 1 simply provides guidance to the SF-DCT to facilitate efficient claims processing and to allow the orderly closure of incomplete and ineligible claims.

Second, Korean Claimants' assertion that they had no opportunity to comment on Closing Order 1 is also incorrect. Korean Claimants admit that they received notice of Closing Order 1 through the ECF system – the system that has been established by the Eastern District of Michigan to provide notice. Motion for Extension, p. 4. Had Korean Claimants wished to object to or appeal Closing Order 1, they could have done so in 2018 when it was entered. They did not do so and cannot do so now at this late date. Closing Order 1 is not a "judgment" but even were Federal Rule of Civil Procedure 60 applicable, a request for relief under that

Rule must be raised within a reasonable time—in most cases within one year. *See* Fed. R. Civ. P. 60(c)(1) (stating that a motion under Fed. R. Civ. P. 60(b) must be made within a reasonable time—and motions under Fed. R. Civ. P 60(b)(1), (2), and (3) must be made no more than a year after the entry of the judgment or order or the date of the proceeding); *Yarbrough v. Warden, Lebanon Correctional Inst.*, No. 16-4083, 2017 WL 3597427, at *2 (6th Cir May 25, 2017) ("A Rule 60(b)(1) motion must be filed within one year of the challenged judgment."); *Abdul-Mateen v. Bell*, No. 09-CV-13710, 2012 WL 4450028, at *1 (E.D. Mich. Sept. 26, 2012) ("Plaintiff's motion is untimely because it was filed over four months after the one-year limitation under Fed. R. Civ. P. 60(c)(1) expired") (quoting Fed. R. Civ. P. 60(c)(1)). A request raised more than two and a half years after entry of the order cannot be considered a "reasonable" period of time. *See Gresham v. Johnson*, No. 13-10351, 2015 WL 5729072, at *1 (E.D. Mich. Sept. 30, 2015) (holding that relief was unavailable under any subsection of Fed. R. Civ. P. Rule 60(b), as plaintiff had filed twenty months after the court issued its judgment); *Johnson v. Genesee County*, No. 12-CV-10976, 2015 WL 6671521, at *2 (E.D. Mich. Nov. 2, 2015) ("Plaintiff sat on his right to seek relief from judgment for nearly two years . . . The Court finds insufficient basis in the facts and circumstances presented here to excuse Plaintiff's tardy filing of his Rule 60(b)(6) Motion"). Of course, any such appeal or challenge

would have been futile—because the deadline that Korean Claimants dispute was not established by Closing Order 1.

B. THE RELIEF REQUESTED BY KOREAN CLAIMANTS WOULD RESULT IN A PLAN MODIFICATION PROHIBITED BY THE CODE AND THE PLAN

The relief that Korean Claimants seek would result in a prohibited Plan modification. The Plan was consummated over a decade ago and may not at this point be modified.[9] 11 U.S.C. § 1127(b) ("The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan"). The SFA (to which Annex A is appended) itself prohibits modification of any of its terms absent written agreement of the Reorganized Dow Corning and the Claimant's Advisory Committee and/or approval by the Court.

> This Agreement may be amended to resolve ambiguities, make clarifications or interpretations or to correct manifest errors contained herein by an instrument signed by the Reorganized Dow Corning and the Claimants' Advisory Committee. All other amendments, supplements, and modifications shall require approval of the Court after notice to the Reorganized Dow Corning, the Shareholders, and the Claimants' Advisory Committee and such other notice and hearing as the Court may direct, provided that without the prior written consent of the Reorganized Dow Corning and the Claimants' Advisory Committee the Agreement shall not be amended, supplemented or modified if such

[9] *See Korean Claimants v. Claimants' Advisory Committee*, 813 Fed. Appx. 211, 218 (6th Cir. 2020) ("The Bankruptcy Code limits modification of a confirmed plan when the plan has been substantially consummated. . . . The record indicates that the Plan – which became effective in 2004 – has been substantially consummated.").

> amendment, supplement, or modification would, directly or indirectly: (i) increase the liquidation value or settlement value of any Claim, or the amount or value of any payment, award or other form of consideration payable to or for the benefit of a Claimant, including, without limitation, any cash payment or other benefits provided to a Claimant, . . .

SFA § 10.06. *See also Korean Claimants v. Claimants' Advisory Committee,* 813 Fed. Appx. 211, 218 (6th Cir. 2020) ("As Korean Claimants are neither plan proponents nor the reorganized debtor, they have no ability to initiate a modification.").

Further, the district court has no power to modify a confirmed plan. *In Re Clark-James v. Settlement Facility Dow Corning Trust*, No. 08-1633, 2009 WL 9532581, *2 (6th Cir. 2009) ("the district court had no authority to modify the Plan, equitable or otherwise"); *In re MCorp Fin., Inc.*, 137 B.R. 219, 228 (Bankr. S.D. Tex. 1992) (section 1127 provides that "only the proponent of a chapter 11 plan can seek to have it modified," and a court "cannot, *sua sponte*, modify the chapter 11 plan.") (internal citations omitted); *see also Goodman v. Phillip R. Curtis Enterprises, Inc.*, 809 F.2d 228, 234 (4th Cir. 1987) ("Under § 1127(b), post-confirmation modification can only be initiated by the proponent of a plan or a reorganized debtor.").[10] The Court does not have the power to grant the relief requested by Korean Claimants.

[10] Even if the Korean Claimants' request to change the claim resolution procedures was not invalid, they lack standing to modify the Plan, because they are not

C. KOREAN CLAIMANTS INCORRECTLY CONFLATE THE PROVISION FOR TERMINATION OF THE SETTLEMENT FACILITY WITH CLOSING ORDER 1

Korean Claimants incorrectly equate the closing procedures set forth in Closing Order 1 (intended to facilitate the processing and payment of the remaining timely filed claims) with the final termination of the Settlement Facility. They contend that an order terminating the Settlement Facility must be preceded by notice and a hearing and because Korean Claimants did not receive such notice and did not participate in a hearing, Closing Order 1 is void. Motion for Extension, p. 6.

The termination of the Settlement Facility is governed by the Funding Payment Agreement (Exhibit K). The Funding Payment Agreement provides:

> Dow Corning's obligation to fund up to the amount of the applicable Annual Payment Ceiling shall continue until the earlier of (i) the date when all Allowed Claims in each of Classes 5 through 19 and all other obligations of the Settlement Facility and the Litigation Facility have been paid, all Claims filed have been liquidated and paid or otherwise finally resolved, and no new timely Claims have been made against the Settlement Facility or the Litigation Facility for two consecutive Funding Periods; or (ii) the payment of all amounts required by this Agreement. Upon the occurrence of one or more of the events set forth in the immediately preceding sentence, Dow Corning shall seek confirmation from the Court, after notice to all other Parties and the opportunity for hearing, that Dow Corning's funding obligations under [the Funding Payment Agreement] have been terminated.

"proponents of a plan." Courts have uniformly rejected on standing grounds attempts by claimants, creditors or other parties in interest who are not plan proponents to modify a confirmed plan. *See In re Longardner & Assocs., Inc.*, 855 F.2d 455, 462 n.8 (7th Cir. 1988); *Goodman v. Phillip R. Curtis Enter., Inc.,* 809 F.2d 228, 233 (4th Cir. 1987).

Funding Payment Agreement § 2.01(c).

Closing Order 1 was not and is not an order terminating the Settlement Facility. It is merely an administrative order providing guidance during the final period of operation of the Settlement Facility. The conditions for termination have not yet occurred: The Settlement Facility continues to review and process and pay timely filed Allowed claims and there has not yet been any determination of the final funding obligation of Dow Silicones.

In arguing that Closing Order 1 effects termination of the Settlement Facility, Korean Claimants assert that the Claims Administrator has not used "best efforts to complete the claims." Motion for Extension, p. 7. Again, this argument is irrelevant—because no order of termination has been entered. The argument also once again misstates the requirements: Korean Claimants cite Section 10.03 of the SFA for the proposition that the Claims Administrator must "complete the claims" once the Settlement Facility has been terminated. Motion for Extension, p. 5. Section 10.03 does not refer to completing claims – it instead addresses the administrative wind down of the Settlement Facility operation – meaning disposition of equipment and files, termination of contracts for services, and similar actions.

D. KOREAN CLAIMANTS WRONGLY ASSERT THAT THEY LOST THE OPPORTUNITY TO FILE CLAIMS

Korean Claimants state that over 400 claimants failed to file their claims by the June 3, 2019 deadline. Motion for Extension at p. 4, 7. They do not, however, assert that this failure was due to lack of notice of the deadline. Instead, they admit that they failed to file claims because they were "optimistic" that their motion to enforce a "mediation" would be successful and that they therefore would not be required to file claims. *Id*. at p. 7. There is no excuse for the failure to file timely claims: attorneys and counsel received multiple notices and reminders starting over two years before the deadline. Counsel for Korean Claimants was reminded specifically of the June 3 deadline and that it applied to all claims regardless of status. *See* Bearicks Dec. at ¶ 9 and Exhibit 2. The fact that motions were pending at the time is irrelevant: no one can know the outcome of a pending motion and no one could reasonably rely on a potential favorable outcome as a reason to forgo filing.

Counsel cannot credibly contend that he did not know to file claims by the deadline or that somehow the pendency of the motion to enforce mediation provided a reasonable basis for not filing: in fact, he filed over 200 claims at the deadline—while the motion to enforce mediation was still pending. *See id.* at ¶ 10.[11]

[11] *See also Korean Claimants v. Claimants' Advisory Committee,* 813 Fed. Appx. 211 (6th Cir. 2020).

CONCLUSION

For the foregoing reasons, Dow Silicones Corporation, the Debtor's Representatives and the Claimants' Advisory Committee respectfully request that the Court deny the Motion for Extension.

Dated: February 17, 2021 Respectfully submitted,

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Claimants' Advisory Committee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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In re:	§	**Case No. 00-CV-00005**
SETTLEMENT FACILITY DOW CORNING TRUST	§	**Hon. Denise Page Hood**

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2021, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all registered counsel in this case.

Dated: February 17, 2021

/s/ Deborah Greenspan

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